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TO : Examiner Tina Kachevis
COMPANY : USPTO
FAX No. : 703-746-5204
No of PAGES : 8 (including cover sheet)
FROM : Van Dyke & Associates, P.A.
DATE : September 29, 2003
RE : Terminal Disclaimer for Docket AdVec101A-C2;
Application Ser. No.: 09/981,648, & attachments.

SENT BY FACSIMILE ONLY

Dear Examiner Kachevis:

Based on our conversation this morning, I attach for entry into the above-referenced application the following documents:

- 1) PTO Form SB-26 Terminal Disclaimer (1 page);
- 2) PTO Form SB-96 Statement Under CFR3.73(b)(1 page);
- 3) Relevant Assignment (4 pages); and
- 4) PTO Form 2038 for payment of Disclaimer Fees in the amount of \$110.

Thank you,
Joseph Fischer, Reg'n. No.: 51,210, Associate
Van Dyke & Associates, P.A.

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PTO/SB/26 (08-03)

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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING

Docket Number (Optional)

REJECTION OVER A PRIOR PATENT

Advec101A-C2

In re Application of:

Graham et al.

Application No.:

09/981,648

Filed:

10/16/2001

For:

Enhanced System for Construction of Adenovirus Vectors

The owner*, Merck & Co., Inc. 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,379,943. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

Signature

Date

JOSEPH FISCHER

Typed or printed name

407-240-0085

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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STATEMENT UNDER 37 CFR 3.73(b)Applicant/Patent Owner: Merck & Co., Inc.Application No./Patent No.: 09/981,648 Filed/Issue Date: 10/16/2001Entitled: Enhanced System for Construction of Adenovirus VectorsMerck & Co., Inc., a corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest.
The extent (by percentage) of its ownership interest is _____ %
in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

- All inventors, Graham,
1. From: Parke & Ng To: Merck & Co., Inc.
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
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☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.
[NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

09/29/2003
Date
407-240-0085
Telephone number

Joseph Fischer
Typed or printed name
[Signature]
Signature
Attorney for Applicant
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Attorney Docket No. ADVEC-10IA

ASSIGNMENT OF PATENT APPLICATION**FOR GOOD AND VALUABLE CONSIDERATION,**

We, the undersigned (each) have agreed and hereby agree to assign for good and valuable consideration, receipt of which is hereby expressly acknowledged, and do hereby sell, assign and transfer unto

Merck & Co., Inc.

a corporation organized under the laws of the state of New Jersey as Assignee, and its successors, assigns and legal representatives, the entire right, title and interest owned by the undersigned, for all countries in and to certain inventions relating to

Enhanced System for Construction of Adenovirus Vectors

described in an application for Letters Patent of the United States, identified as Attorney Docket No. ADVEC-10IA, at Van Dyke & Associates, P.A., 7200 Lake Ellenor Drive, Suite 252, Orlando, FL 32809 and filed on 10/8/1999, as Application Serial No. 09/415,899, and the invention(s) and improvement(s) set forth therein, and any and all continuations, continuations-in-part, divisionals, and renewals of and substitutes for said application for said Letters Patent, and all the rights and privileges under any and all Letters Patent that may be granted therefor in any country, and any reissues, or reexaminations, or extensions of said Letters Patent. We request that any and all Letters Patent for said inventions be issued to said Assignee, its successors, assigns and legal representatives, or to such nominees as it may designate.

We agree that, when requested, we will, without charge to said Assignee but at its expense, sign all papers, take all rightful oaths, and do all acts which may be necessary, desirable or convenient for securing and maintaining patents for said inventions in any and all countries and for vesting title thereto in said Assignee, its successors, assigns and legal representatives or nominees.

We authorize and empower the said Assignee, its successors, assigns and legal representatives or nominees, to invoke and claim for any application for patent or other form of protection for said inventions filed by it or them, the benefit of the right of priority provided by the International Convention for the Protection of Industrial Property, as

amended, or by any convention which may henceforth be substituted for it, and to invoke and claim such right of priority without further written or oral authorization from us.

We hereby consent that a copy of this assignment shall be deemed a full legal and formal equivalent of any assignment, consent to file or like document which may be required in any country for any purpose and more particularly in proof of the right of the said Assignee or nominee to claim the aforesaid benefit of the right of priority provided by the International convention which may henceforth be substituted for it.

We covenant with said Assignee, its successors, assigns and legal representatives, that the rights and property herein conveyed are free and clear of any encumbrance, and that we have full right to convey the same as herein expressed.

IN WITNESS WHEREOF, we have hereunto signed our names on the day and year set forth below.

Frank L. Graham Nov. 11, 2002
Inventor's Signature DATE

Frank L. Graham
Inventor's Printed Name

On this 11th day of November, 2002, before me personally came the above named Frank L. Graham who is personally known by me or proved to me on the basis of satisfactory evidence to be the same individual who executed the foregoing assignment, and who acknowledged to me that he/she executed the same of his/her own free will for the use and purposes therein set forth.

[Signature]
NOTARY PUBLIC

My Commission Expires: unlimited

Hamilton, Ontario
City/Province

CANADA
Country

Robin Parks
Inventor's Signature

Dec 9/2002
DATE

Robin Parks
Inventor's Printed Name

On this 9th day of December, 2002, before me personally came the above named Robin Parks who is personally known by me or proved to me on the basis of satisfactory evidence to be the same individual who executed the foregoing assignment, and who acknowledged to me that he/she executed the same of his/her own free will for the use and purposes therein set forth.

[Signature]
Notary Public for the City of
Ottawa, for the Ottawa Hospital
Notary Public for the City of Ottawa, Ontario
Ottawa, Ontario
City/Province
Canada
Country

Philip Ng
Inventor's Signature

Dec 5/02
DATE

Philip Ng
Inventor's Printed Name

On this 5 day of December, 2002, before me personally came the above named Philip Ng who is personally known by me or proved to me on the basis of satisfactory evidence to be the same individual who executed the foregoing assignment, and who acknowledged to me that he/she executed the same of his/her own free will for the use and purposes therein set forth.

Sherril Weaver
NOTARY PUBLIC
My Commission Expires: 7/26/05

Houston, Texas
City/Province

USA
Country



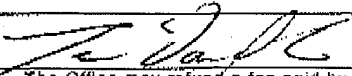
PTO-2038 (02-2000)

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Request and Payment Information**Description of Request and Payment Information:** Terminal Disclaimer Fee 37 CFR 1.20(d)

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| Application No. 09/981,648 | Application No. | Serial No. | IDON Customer No. |
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